

WASTE MANAGEMENT AND RADIATION CONTROL BOARD

Executive Summary Repeal of Rule R313-27 July 14, 2016

What is the issue before the Board?	The Board is asked to approve for publication in the <i>Utah Bulletin</i> and commencement of a 30-day public comment period the repeal of Rule R313-27, titled “Medical Use Advisory Committee.”
What is the historical background or context for this issue?	<p>R313-27 requires the Board to appoint a “Medical Use Advisory Committee.” The committee is to review any rule or other policy that affects the medical use of radiation and to make a recommendation to the Board on the proposed rule. R313-27 sets the makeup of the committee and requires the committee to report to the Board prior to any Board action on a rule related to the medical use of radiation. R313-27 was adopted by the Radiation Control Board in its final meeting in June 2015.</p> <p>The Division has received a memo from Craig Anderson, Assistant Attorney General, which states Mr. Anderson’s opinion that the Radiation Control Board did not have the authority to make R313-27 (see attached memo).</p> <p>It should be noted that, prior to bringing a new rule or rule modification to the Board, the Division staff reviews federal regulations and guidance documents, guidance documents from national organizations with interest in the area under consideration for rulemaking and any model rules from national organizations. The Division staff will craft a rule proposal using these guides and staff expertise. The draft rule will then go through an internal review process. In this process, the draft rule is typically sent to interested parties, affected groups and organizations. Comments from these groups will be reviewed and modifications to any proposed rule made where necessary. Some or all of these actions, referred to as scoping, are done prior to presenting a new or modified rule to the Board for action.</p>
What is the governing statutory or regulatory citation?	19-6-104 of the Utah Code Annotated provides rulemaking authority to the Board.
Is Board action required?	Yes.
What is the Division Director’s recommendation?	The Director recommends that the Board authorize publication of the draft repeal of R313-27 in the <i>Utah Bulletin</i> for a 30-day public comment period.
Where can more information be obtained?	For more information, please contact Ralph Bohn at (801) 536-0212 or rbohn@utah.gov

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OAG-089-16

MEMORANDUM

TO: Scott T. Anderson, Director
Division of Waste Management and Radiation Control
Utah Department of Environmental Quality

FROM: Craig W. Anderson, Director
Environment and Health Division
Utah Attorney General's Office 

DATE: June 21, 2016

SUBJECT: Authority for the Utah Radiation Control Board
to Create a Medical Use Advisory Committee

This memorandum is written in response to your inquiry regarding the authority of the Utah Radiation Control Board ("Board") to create a Medical Use Advisory Committee ("Committee"). Based on our recent discussion, I understand that in a meeting on June 9, 2015, the Board enacted the Medical Use Advisory Committee rule ("Rule"). The Rule created the Committee to "... review and make recommendations prior to a Board action for any rule or other policy matter that affects the medical use of radiation."¹ Pursuant to your request, I have reviewed the relevant statutory authority and requirements for the creation of an advisory committee.

Section 63C-1-102 of the Utah Code provides the statutory authority for the creation of an advisory board, advisory commission, and advisory council as a board, commission, or council that:

- (a) provides advice and makes recommendations to another person or entity who makes policy for the benefit of the general public;
- (b) is created by and whose duties are provided by statute or executive order; and,
- (c) performs its duties only under the supervision of another person as provided by statute.

Based on this language, a state board needs specific authority to create an advisory committee.

¹ Utah Admin. Code R313-27-1.

Before it was repealed on July 1, 2015, § 19-3-103.5 described the statutory authority of the Board. That statute did not, however, specifically provide the authority for the Board to create an advisory committee. Title 19 of the Environmental Quality Code does provide for advisory committees. The power to create advisory committees in Title 19 is vested with the Executive Director of the Utah Department of Environmental Quality.² Since the Legislature included a specific provision for advisory committees in Title 19, it is reasonable to assume it intended that power to reside with the Executive Director and not the Boards. For this reason, it is my opinion that the Board did not have authority to create the Committee.

CWA/srb

² Utah Code Ann., § 19-1-202(2)(e).

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

~~[R313-27. Medical Use Advisory Committee.~~

~~R313-27-1. Formation and Role of Medical Use Advisory Committee.~~

~~—— (1) The board shall appoint a Medical Use Advisory Committee to review and make recommendations prior to a board action for any rule or other policy matter that affects the medical use of radiation. Committee members shall be appointed after considering recommendations from affected groups or individuals.~~

~~—— (2) The Medical Use Advisory Committee shall consist of at least three members, with the majority of members from an area of medical use affected by the rulemaking action.~~

~~—— (3) Members may include non-physician professionals if the member's professional credentials are applicable to the scope of the matter being considered.~~

~~—— (4) Members may include board members.~~

~~—— (5) The Medical Use Advisory Committee shall, by majority vote, provide recommendations and, as appropriate, suggested rule language to the board. Minority recommendations and suggested rule language, if any, shall also be provided to the board.~~

~~—— (6) This rule shall not apply to emergency rulemaking under Section 63G-3-304.~~

~~KEY: medical use advisory committee, medical use of radiation~~

~~Date of Enactment or Last Substantive Amendment: July 9, 2015~~

~~Authorizing, and Implemented or Interpreted Law: 19-3-103.5; 19-3-104(4)]~~

NOTICE OF
PROPOSED RULE REPEAL

- The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- Please address questions regarding information on this notice to the agency.
- The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- The full text of all rule filings may also be inspected at the Office of Administrative Rules.

Rule Information	
DAR file no:	Date filed:
State Admin Rule Filing Key: 157663	
Utah Admin. Code ref. (R no.): R313-27	
Agency Information	
1. Agency:	ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Radiation
Room no.:	Third Floor
Building:	
Street address 1:	195 N 1950 W
Street address 2:	
City, state, zip:	SALT LAKE CITY UT 84116-3085
Mailing address 1:	PO BOX 144850
Mailing address 2:	
City, state, zip:	SALT LAKE CITY UT 84114-4850
Contact person(s):	
Name:	Phone:
	Fax:
	E-mail:
	Remove:
(Interested persons may inspect this filing at the above address or at DAR during business hours)	
Rule Title	
2. Title of rule or section (catchline):	
Medical Use Advisory Committee	
Notice Type	
3. Type of notice: Repeal	
Rule Purpose	
4. Purpose of the rule or reason for the change:	
R313-27 requires the Board to appoint a "Medical Use Advisory Committee" to review and make recommendation to the Board on any rule or other policy that affects the medical use of radiation. The rule sets the makeup of the committee and requires the committee to report to the Board prior to any Board action on the rule. R313-27 was adopted by the Radiation Control Board in its final meeting in June 2015. The Division has received an opinion from the Attorney General's office that the Radiation Control Board under authority that existed in June 2015 did not have the authority to make R313-27. The rule is being repealed as the authority did not nor does now exist to make the rule.	
Response Information	
5. This change is a response to comments by the Administrative Rules Review Committee.	
<input checked="" type="radio"/> No <input type="radio"/> Yes	
Rule Summary	
6. Summary of the rule or change:	
R313-27 is repealed.	
Aggregate Cost Information	
7. Aggregate anticipated cost or savings to:	
A) State budget:	
Affected: <input type="radio"/> No <input checked="" type="radio"/> Yes	
Savings to the state budget will be realized as no resources will have to be expended to organize the committee that is required by the rule. The actual savings are unknown as no committee was ever formed so the time required is unknown.	
B) Local government:	

<http://erules.rules.utah.gov/erules/secure/ruleFilingEdit.action?ruleId=157663>

6/23/2016

Affected: ☒ No ☐ Yes

The requirements in R313-27 applied only to the Waste Management and Radiation Control Board and are being repealed, therefore, there will be no cost or savings to local government.

C) Small businesses:

Affected: ☒ No ☐ Yes

("small business" means a business employing fewer than 50 persons)

The requirements in R313-27 applied only to the Waste Management and Radiation Control Board and are being repealed, therefore, there will be no cost or savings to small business.

D) Persons other than small businesses, businesses, or local government entities:

Affected: ☒ No ☐ Yes

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)

The requirements in R313-27 applied only to the Waste Management and Radiation Control Board and are being repealed, therefore, there will be no cost or savings to other persons.

Compliance Cost Information

8. Compliance costs for affected persons:

The requirements in R313-27 are being repealed therefore there will be no compliance costs to affected persons.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

The requirements in R313-27 applied only to the Waste Management and Radiation Control Board and are being repealed, therefore, there will be no cost impacts to business.

B) Name and title of department head commenting on the fiscal impacts:

Alan Matheson

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :
Section 19-6-104

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

Official Title of Materials Incorporated (from title page)
Publisher
Date Issued (mm/dd/yyyy)
Issue, or version (including partial dates)
ISBN Number
ISSN Number
Cost of Incorporated Reference
Adds, updates, removes-- SELECT ONE --

Comments

12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) : 08/31/2016

B) A public hearing (optional) will be held:

On (mm/dd/yyyy): At (hh:mm AM/PM): At (place):

Proposed Effective Date

13. This rule change may become effective on (mm/dd/yyyy):

09/07/2016

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After a minimum of seven days following the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a

Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.		
Indexing Information		
14. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")): medical use advisory committee, medical use of radiation		
File Information		
15. Attach an RTF document containing the text of this rule change (filename): There is a document associated with this rule filing.		
To the Agency Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.		
Agency Authorization		
Agency head or designee, and title:	Brad Johnson Deputy Director	Date (mm/dd/yyyy): 06/23/2016